

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA**

**IN THE MATTER OF:**

**Biedermann Manufacturing Industries  
Incorporated,**

**Debtor**

**Case No. 10-9207-8  
Chapter 11**

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**Motion For Authority To Use Cash Collateral**

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Biedermann Manufacturing Industries Incorporated (the “Debtor”) moves the Court pursuant to §363 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure as follows:

1. On November 8, 2010 (the “Petition Date”), the Debtor filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code, and operates as a debtor-in-possession.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**Background**

3. The Debtor is a Connecticut corporation that has been engaged in the business of manufacturing precision screw machine products since 1983. The Debtor has business operations in Thomaston, Connecticut, Raleigh, North Carolina and Westminster, South Carolina. The Debtor sells its products throughout the United States and internationally to equipment manufacturers.

4. Over the past few years, the Debtor’s business has declined as a result of the recession and global outsourcing. The Debtor’s facility in Connecticut continues to be profitable, while the facilities in North Carolina and South Carolina have experienced significant losses.

**Branch Banking and Trust Company**

5. On October 14, 2008, the Debtor entered into a Letter Loan Agreement – Term Loan (Facility A) and Line of Credit (Facility B) with Branch Banking and Trust Company (“BB&T”) which provides for (i) a \$900,000 term loan (“Term Loan”), and (ii) a \$150,000 revolving line of credit (“Revolver Loan”). Each loan constitutes a separate note and is secured

by a first priority security interest in all existing and after-acquired accounts, inventory, equipment, general intangibles and the proceeds thereof. As of October 21, 2010, the outstanding principal, interest and fees owed under the Term Loan totaled \$670,124.72 and the outstanding amount owed under the Revolver Loan totaled \$154,039.59.

6. The Debtor's initial assessment is that BB&T is properly perfected and has a first lien upon the Debtor's assets pledged to secure the Term Loan and the Revolver Loan (the "BB&T Indebtedness"). However, the Debtor reserves for itself, any Committee of Unsecured Creditors subsequently created, and any trustee subsequently appointed, any and all rights to challenge, avoid, object to, set aside or subordinate any of the aforesaid claims, liens, security interests or rights of setoff. The Debtor does not believe that any other creditors have or assert liens upon or security interests in the Debtor's inventory or accounts receivable, or the proceeds thereof.

7. The proceeds of the accounts receivable and inventory of the Debtor subject to the BB&T liens or security interests would constitute "cash collateral" as that term is defined in the Bankruptcy Code, the use of which is subject to the restrictions set forth in § 363.

#### **Relief Requested**

8. The Debtor is dependent upon continued and uninterrupted use of the proceeds from collections on its accounts receivable, and from funds or accounts generated by the sale of its inventory, for revenue.

9. While the Debtor may have some unrestricted cash in its accounts as of the Petition Date, the Debtor will need to receive and use the proceeds of inventory and accounts to pay on-going costs of operating, insuring, preserving, and protecting the business and property of the estate. If not permitted to use the cash collateral of BB&T to pay its ordinary operating expenses, the Debtor will have to close down operations forthwith. Such precipitous action, if required, would render reorganization impossible and severely reduce the fair market value of the estate, resulting in financial loss to all parties in interest. To that end, the Debtor requests the Court to authorize the use of cash collateral as set forth herein.

10. An order granting interim relief, followed by a final hearing at some future date selected by the Court, would not prejudice the rights of BB&T, the only creditor asserting an interest in cash collateral, and BB&T will be adequately protected for such use by a replacement lien on post-petition accounts and inventory including completed finished goods. The use of such

funds is necessary to continue operations without interruption and will generate new receivables and preserve the value of the estate for creditors.

11. The Debtor offers to provide BB&T with adequate protection by:
  - a. Limiting the use of cash collateral as generally projected in the attached budget, not to exceed 110% on a line-item cumulative basis, pending further orders of the Court after notice and hearing.
  - b. Providing BB&T with a continuing post-petition lien and security interest in all property and categories of property of the Debtor in which and of the same priority as said creditor held a similar, unavoidable lien as of the Petition Date, and the proceeds thereof, whether acquired pre-petition or post-petition (the "Post-petition Collateral"), equivalent to a lien granted under Section 364(c)(2) and (3) of the Bankruptcy Code, but only to the extent of cash collateral used.
    - i. The validity, enforceability, and perfection of the aforesaid post-petition liens on the Post-Petition Collateral shall not depend upon filing, recordation, or any other act required under applicable state or federal law, rule, or regulation. If BB&T hereafter requests the Debtor to execute and deliver financing statements or other such instruments or documents reasonably considered by said creditor to be necessary or desirable to further evidence the perfection of liens and security interest herein granted, the Debtor would be authorized and directed to execute and deliver such financing statements, instruments, and documents to BB&T without further notice, hearing, or order.
    - ii. Notwithstanding the lien therein granted to BB&T to secure the Debtor's use of its cash collateral, such creditor shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner/operator" with respect to the operation or management of the Debtor solely by virtue of any terms or conditions of the Order.
  - c. Providing BB&T with an administrative expense claim to the extent the use of cash collateral, after application of the proceeds of the replacement collateral, results in a decrease in the value of such entity's interest in such property.

d. Providing BB&T with financial reports in form and frequency reasonably acceptable to BB&T.

12. The Debtor seeks authority to use cash collateral through and including the effective date of a confirmed plan of reorganization or liquidation, or the conversion of this case to Chapter 7, whichever may first occur: provided, however, without further notice and hearing the Debtor may not use cash collateral for any purpose other than operations in the ordinary course of business or the payment of allowed administrative fees, costs, or expenses, irrespective of whether such purpose would be proper under applicable law.

13. The Debtor proposes that to the extent that BB&T has any objection to any of the items paid or provided for as set forth in the monthly reports or other reports of operations filed or furnished to said creditor, or objects to a proposed budget or to a specific manner in which cash collateral is being used, then said creditor may, upon ten (10) days notice to the Debtor and opportunity to cure: (i) seek an order of the Bankruptcy Court restraining such payments or usage as not being in conformity with this Motion; or (ii) seek an Order terminating further authority to use cash collateral altogether.

14. The Debtor seeks the consent of BB&T to the use of cash collateral for the limited purposes set forth in this Motion. In the absence of such consent, if not forthcoming, the Debtor asks the Court to authorize such use and to provide adequate protection to such creditor to the extent the use of cash collateral impairs such creditor's interest, in a manner and to the extent to be determined by the Court at the hearing on this Motion.

Wherefore, the Debtor prays the Court for the following relief:

1. That an interim order in the form attached hereto as **Exhibit A** be entered by this Court after notice and interim hearing (i) authorizing the Debtor to use cash collateral in an amount to be determined at the interim hearing based upon the proposed budget attached thereto, and (ii) providing BB&T with adequate protection as set forth herein.

2. That a final hearing be held regarding this motion, the interim order, and the Debtor's request for a final order, after providing such notice as is required by Rule 4001 of the Federal Rules of Bankruptcy Procedure.

3. Such other relief as the Court may deem necessary and proper.

Respectfully submitted on behalf of the Debtor, this the 9<sup>th</sup> day of November, 2010.

/s/ John A. Northen

**Counsel for the Debtor:**

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This automated form is made available compliments of GCH Business Owner's Toolkit!

**Cash Flow Budget Worksheet**

Updated 11/9/10	Nov 7-13	Nov 14-20	Nov 21-27	Nov 28-Dec 4	Dec 5-11	Dec 12-18	Dec 19-25	Dec 26-Jan 1	Jan 2-8	Jan 9-15	Total
<b>Beginning Cash Balance</b>	\$18,000	\$1,921	\$30,045	\$26,077	\$5,830	\$10,400	\$28,185	\$36,582	\$8,329	\$12,178	
<b>Cash Inflows (Income):</b>											
Accts. Rec. Collections	\$26,500	\$58,500	\$61,700	\$33,800	\$62,900	\$64,800	\$59,500	\$28,000	\$48,700	\$55,700	\$500,100
Loan Proceeds											\$0
<b>Total Cash Inflows</b>											
<b>Available Cash Balance</b>	\$26,500	\$58,500	\$61,700	\$33,800	\$62,900	\$64,800	\$59,500	\$28,000	\$48,700	\$55,700	\$500,100
<b>Cash Outflows (Expenses):</b>											
Raw Materials	\$0	\$6,617	\$4,528	\$5,961	\$6,293	\$6,071	\$3,743	\$6,075	\$5,828	\$6,242	\$51,357
Freight In	\$0	\$212	\$145	\$191	\$201	\$194	\$120	\$194	\$185	\$200	\$1,643
Outside Service (HT & Plate)	\$1,385	\$1,266	\$866	\$1,140	\$1,204	\$195	\$716	\$1,162	\$1,115	\$1,194	\$11,210
Factory Tools	\$274	\$213	\$146	\$192	\$202	\$195	\$120	\$195	\$188	\$201	\$1,926
Factory Supplies	\$0	\$247	\$169	\$223	\$235	\$227	\$140	\$227	\$218	\$233	\$1,920
Cutting Oil (Solvent)	\$0	\$447	\$0	\$718	\$0	\$447	\$0	\$0	\$718	\$0	\$2,330
Grinding Service	\$0	\$558	\$382	\$503	\$531	\$512	\$316	\$512	\$492	\$527	\$4,332
Misc/ Maint Repair	\$0	\$460	\$315	\$415	\$438	\$422	\$260	\$423	\$405	\$434	\$3,573
Waste Removal	\$0	\$305	\$0	\$103	\$0	\$305	\$0	\$103	\$0	\$305	\$1,121
Payroll	\$28,000	\$8,000	\$23,700	\$17,000	\$20,500	\$20,500	\$20,500	\$17,000	\$20,500	\$20,500	\$196,200
Payroll Taxes	\$11,210	\$3,200	\$9,400	\$6,700	\$8,200	\$8,200	\$8,200	\$6,700	\$8,200	\$8,200	\$78,210
Health Ins/ AFLAC/ 401K	\$1,550	\$1,650	\$2,419	\$20,031	\$1,650	\$1,650	\$2,419	\$18,837	\$1,650	\$1,650	\$53,606
Rent or Lease	\$0	\$0	\$8,033	\$0	\$17,500	\$0	\$8,033	\$0	\$0	\$17,500	\$51,066
Bank Charges/401k Admin	\$0	\$700	\$294	\$294	\$0	\$700	\$0	\$294	\$0	\$0	\$1,988
Office Copier/ Postage	\$0	\$146	\$147	\$147	\$146	\$275	\$147	\$0	\$146	\$146	\$1,428
Telephone	\$0	\$394	\$594	\$370	\$270	\$394	\$594	\$370	\$270	\$270	\$3,526
Utilities (Gas, Electric, Water)	\$0	\$6,600	\$8,200	\$0	\$900	\$5,700	\$0	\$4,100	\$0	\$900	\$26,400
Auto Expense (Gas)	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$600
Quarterly Court Fees									\$4,875	\$4,875	\$9,750
Insurance (Property & WC)			\$5,736				\$5,736				\$11,472
<b>Subtotal</b>	\$42,579	\$30,376	\$65,668	\$54,047	\$58,330	\$47,015	\$51,104	\$56,253	\$44,851	\$63,437	\$513,659
<b>Subtotal</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Cash Outflows</b>	\$42,579	\$30,376	\$65,668	\$54,047	\$58,330	\$47,015	\$51,104	\$56,253	\$44,851	\$63,437	\$513,659
<b>Ending Cash Balance</b>	\$1,921	\$30,045	\$26,077	\$5,830	\$10,400	\$28,185	\$36,582	\$8,329	\$12,178	\$4,441	
<b>Accounts Receivable</b>											
Beginning Balance	\$313,067	\$319,023	\$318,066	\$295,737	\$313,771	\$305,590	\$293,582	\$266,626	\$291,451	\$293,429	
Plus Sales	\$32,456	\$57,543	\$39,371	\$61,834	\$54,719	\$52,792	\$32,544	\$52,825	\$50,678	\$54,280	\$479,042
Less A/R Collections	\$26,500	\$58,500	\$61,700	\$33,800	\$62,900	\$64,800	\$59,500	\$28,000	\$48,700	\$55,700	\$500,100
Ending A/R Balance	\$319,023	\$318,066	\$295,737	\$313,771	\$305,590	\$293,582	\$266,626	\$291,451	\$293,429	\$292,009	
<b>R/M,F/G,UFG Inventory</b>											
Beginning Balance	\$1,644,000	\$1,618,084	\$1,602,271	\$1,594,139	\$1,596,451	\$1,604,073	\$1,609,447	\$1,598,247	\$1,603,658	\$1,607,738	
Plus Completed Parts	\$6,540	\$41,730	\$31,239	\$54,146	\$62,341	\$58,166	\$21,344	\$58,236	\$54,758	\$61,377	\$449,877
Less Sales	\$32,456	\$57,543	\$39,371	\$51,834	\$54,719	\$52,792	\$32,544	\$52,825	\$50,678	\$54,280	\$479,042
Ending Balance	\$1,618,084	\$1,602,271	\$1,594,139	\$1,596,451	\$1,604,073	\$1,609,447	\$1,598,247	\$1,603,658	\$1,607,738	\$1,614,835	
<b>A/R &amp; Inventory Combined</b>											
Beginning Balance	\$1,957,067										
<b>Ending Balance</b>	\$1,937,107	\$1,920,337	\$1,889,876	\$1,910,222	\$1,909,663	\$1,903,029	\$1,864,873	\$1,895,109	\$1,901,167	\$1,906,844	

EXHIBIT

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA**

**IN THE MATTER OF:**

**Biedermann Manufacturing Industries  
Incorporated,**

**Debtor**

**Case No. 10-9207-8  
Chapter 11**

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**Notice of Motion**

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The Debtor filed a motion with the Court requesting entry of an Order (i) authorizing the Debtor to use cash collateral in an amount to be determined at the interim hearing based upon the proposed budget, and (ii) providing BB&T with adequate protection as set forth herein. Notice is hereby given that the Motion may be allowed provided no response and request for a hearing is made by the parties in interest in writing to the Clerk of this Court within fourteen (14) days from the date of this Notice (by November 29, 2010); and

Further notice is given that if a response and a request for a hearing is filed by the parties in interest named herein in writing within the time indicated, a hearing will be conducted on the Motion and response thereto at a date, time and place to be later set by this Court and all interested parties will be notified accordingly. If no request for a hearing is timely filed, the Court may rule on the Motion thereto ex parte without further notice.

Respectfully submitted on behalf of the Debtor, this the 9<sup>th</sup> day of November, 2010.

/s/ John A. Northen

**Counsel for the Debtor:**

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA**

<b>IN THE MATTER OF:</b>  <b>Biedermann Manufacturing Industries Incorporated,</b>  <b>Debtor</b>	<b>Case No. 10-9207-8 Chapter 11</b>
<b>CERTIFICATE OF SERVICE</b>	

I hereby certify that I have this day served a copy of the foregoing:

1) by automatic electronic service on:

Marjorie K. Lynch Bankruptcy Administrator Office 434 Fayetteville St. Mall Suite 620 Raleigh, NC 27601	
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2) by depositing a copy of the Notice of Motion in an envelope bearing sufficient postage in the United States mail at Chapel Hill, North Carolina, addressed to the following parties at the following addresses which is the last address known to me:

Avins Industrial Products Attn: Managing Agent 2 North Road Warren, NJ 07059	Bank of America VISA Attn: Managing Agent P O Box 15170 Wilmington, DE 19886
BB&T VISA Attn: Managing Agent P O Box 580340 Charlotte, NC 28258	Brooks Pierce & McLendon Attn: Managing Agent 150 Fayetteville Street Mall, Ste 1600 Raleigh, NC 27602
Connecticut Dept of Revenue Attn: Managing Agent 25 Sigourney Street, Suite 2 Hartford, CT 06106-5032	Connecticut Dept. of Environ. Protection Bureau of Financial and Support Services 79 Elm Street Hartford, CT 06106
Hartford Life Attn: Managing Agent P O Box 2907 Hartford, CT 06104-4465	House of Metals, dba Gibraltar Metals Attn: Managing Agent 385 Stamm Road Newington, CT 06111
Internal Revenue Service Special Procedures 320 Federal Place, Room 312 Greensboro, NC 27401	Massachusetts Dept of Revenue Attn: Managing Agent P O Box 7010 Boston, MA 02204



Metal Shapes & Alloys, LLC Attn: Managing Agent 3300-D North Main Street Anderson, SC 29621-4128	NC Dept of Revenue Attn: Managing Agent P O Box 25000 Raleigh, NC 27640
Oconee County Tax Collector Attn: Managing Agent P O Box 29691 Greenville, NC 29601	Progress Energy Attn: Managing Agent P O Box 20481 Raleigh, NC 27698
Ron White's Attn: Managing Agent 4019 S. Murray Avenue Anderson, SC 29624	Scales Industrial Tech Attn: Managing Agent 292 Pratt Street Meriden, CT 06450
SC Dept of Revenue Sales Tax Section Columbia, SC 29214-0001	Thomaston Tax Collector P O Box 136 Thomaston, CT 06787
Wake County Tax Collector P O Box 2331 Raleigh, NC 27602	Internal Revenue Service Centralized Insolvency Operations P O Box 21126 Philadelphia, PA 19114
BB&T Attn: Managing Agent P O Box 27961 Raleigh, NC 27611	

This the 9<sup>th</sup> day of November, 2010.

/s/ John A. Northen

**Counsel for the Debtor:**

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